FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 270

CECIL W. ARMSTRONG, ET AL., *Petitioners*,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

SOLOMON DIMOND
Attorney for Petitioners
1011 New Hampshire Ave., N. W.,
Washington 7, D. C.

Of Counsel:
BUETON R. THORMAN

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No.

Cecil W. Armstrong and Marie I. Armstrong, co-partners doing business as Armstrong Products Company

Baltimore Copper Paint Co., a division of Oliver Reeder and Son, Inc.

Orrin F. Benner, doing business as Thomaston Steel Works

Mason C. Carter

Chase Brass & Copper Co.

Columbian Bronze Corp.

Maurice W. Dennison, Thomas G. Lynah and Charles J. Winkler, Jr., Trustees doing business as Braman, Dow & Co.

The Dexolium Corporation

Heywood-Wakefield Company

E. F. Hutchinson, doing business as Ned's Garage

Kainer & Company

O. O. Keiver Lumber Corp.

Kennebec Wharf & Coal Company, a division of Staples Coal Company

Hiema J. Kuhls, Anna Kuhls Yates, Gladys Kuhls Woodel and Frieda Kuhls Woodel, co-partners doing business as H. B. Fred Kuhls

Le John Manufacturing Company

Marine Service Inc.

Marshall & Company, Inc.

Richardson, Dana & Co., Inc.

Alfred B. Sherman, doing business as Campbell-Built Products

The Southington Hardware Manufacturing Company

Surrette Storage Battery Co., Inc.

W. & J. Tiebout, Inc.
Kenneth M. Walbridge and Robert P. Walbridge, co-partners doing business as Walbridge Bros.
Wilcox-Crittenden Division of North & Judd Manufacturing Co.
Winde-McCormick Lumber Company.
Wickwire Spencer Steel Division, The Colorado Fuel and Iron Corporation
Maximilian P. Wurf, doing business as Transplastics Fabricating Co.,

Petitioners.

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

To the Chief Justice of the United States and the Associate Justices of the United States Supreme Court:

The petitioners respectfully request this Court to issue a Writ of Certiorari to review the judgment of the United States Court of Claims dismissing the plaintiffs' petition.

THE OPINION BELOW

The Opinion of the United States Court of Claims in *Cecil W. Armstrong, et al.* v. *The United States*, No. 532-56, was rendered January 14, 1959, and is reported in 169 Federal Supplement at page 259. It has not yet been reported in the official Court of Claims volumes. A copy of the opinion is annexed hereto as Appendix I, pp. 1a-8a.

STATEMENT OF GROUNDS OF JURISDICTION

1. The judgment of the United States Court of Claims was rendered and entered on January 14, 1959.

2. Petition to the United States Court of Claims for rehearing was denied, without opinion, on May 13, 1959 (Appendix I, p. 9a).

3. This Court has jurisdiction pursuant to Sec. 1255, Title 28, United States Code.

QUESTIONS PRESENTED FOR REVIEW

1. Does the option given to the Government in the standard "Default" clause of a Government supply contract (in the event of a default termination of the contract) to "require the Contractor to transfer title and deliver to the Government" any completed supplies, partially completed supplies and manufacturing materials which the contractor has specifically produced or acquired for the performance of the contract give the Government "inchoate title" to all such items (before default) immediately upon their acquisition by the contractor?

2. Assuming arguendo that the Government acquires "inchoate title" to materials purchased by the contractor from suppliers upon delivery of the same to the contractor, does this "inchoate title" prevent suppliers from automatically acquiring liens (in accordance with the laws of the State of Maine) on these materials at the time of delivery of the materials to the contractor?

3. Assuming arguendo that liens are acquired by suppliers (in accordance with the laws of the State of Maine) on materials furnished to the contractor upon delivery, and assuming arguendo that the Government acquired "inchoate title" to the materials, are the liens

of the suppliers superior to the Government's "inchoate title"?

4. Where the Government enters into a supply contract for the purchase by it of small boats, which contract (a) provides for title to remain in the contractor during construction and until acceptance by the Government, (b) provides for the Government to have a lien on the said boats to the extent of any moneys it might advance, (c) requires the contractor to immediately discharge liens, and if the contractor fails to discharge said liens, gives the Government the privilege of discharging them at the contractor's expense, (d) makes no provision for payment or completion bonds and (e) grants the Government an option in the event of a default termination of the contract to require the contractor to transfer title to the Government to completed boats, uncompleted boats and manufacturing materials, are said boats a "public work"?

5. When the Government acquires title to boats and materials (situated in the State of Maine) on which there are liens and removes the said boats and materials to other states and effectively destroys the identity of the property, has the Government "taken" the liens within the purview of the Fifth Amendment entitling the lien creditors to just compensation?

STATUTES AND REGULATIONS RELIED ON

1. Constitution of the United States, Amendment 5:

> * * *; nor shall private property be taken for public use, without just compensation.

2. Section 13, Chapter 178, Revised Statutes of the State of Maine, 1954:

> Whoever furnishes labor or materials for building a vessel has a lien on it therefor, which may be

enforced by attachment thereof within 4 days after it is launched; but if the labor and materials have been so furnished by virtue of a contract not fully completed at the time of launching of the vessel, the lien may be enforced within 4 days after such contract has been completed. He also has a lien on the materials furnished before they become part of the vessel, which may be enforced by attachment; and the owners of any dry dock or marine railway used for any vessel have a lien on said vessel for the use of said dock or railway, to be enforced by attachment within 4 days after the last day in which the same is used or occupied by said vessel.

3. Armed Services Procurement Regulation, Section 8-707 (as revised to September 5, 1958):

8-707 Default Clause for Fixed-Price Supply Contracts. The following clause shall be used in all fixed-price supply contracts as defined in ASPR 7-102.

DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, . . .

* * *

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Dispute."

STATEMENT OF THE CASE

The twenty-seven petitioners, suppliers and materialmen under a contract executed by the Department of the Navy and Rice Shipbuilding Corporation of East Boothbay, Maine, hereinafter called "Rice," brought this action to recover just compensation under the Fifth Amendment to the Constitution for property rights taken from them by the Government. Both the petitioners and the Government moved for summary judgment on the basis of the pleadings and papers filed

in conjunction with their motions. The Government's motion was granted and that of the petitioners denied.

Under date of March 26, 1954, the Department of the Navy awarded contract NObs-3572 to Rice to supply eleven 40-foot personnel boats which were to be constructed at Rice's plant at East Boothbay, Maine (Dft's. Ex. A). Rice was unable to complete the construction of the eleven boats, and on August 2, 1955, the Government terminated the contract for default (Dft's. Ex. B). On August 4, 1955, pursuant to the request of the Government's Contracting Officer, Rice executed an itemized "Instrument of Transfer of Title under Contract NObs-3572," which had been submitted to it by the Government (Dft's. Ex. C). This instrument transferred to the Government legal title to all the materials, supplies and hulls in the possession or control of Rice, which were incorporated or to be incorporated into the boats being constructed for the Government. Subsequently the Government took possession of the materials, supplies and hulls and removed them from the State of Maine for completion in its own yards in various states. Rice was subsequently adjudicated a bankrupt.

In acquiring title to the supplies and materials, the Government purported to act in accordance with Section 11(d) of the "Default" clause of the contract, which provided in part as follows (Dft's. Ex. A, General Provisions, p. 3):

> (d) If this contract is terminated . . . the Government . . . may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts,

tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; * * *

During the performance of its contract, Rice received from the Government, from time to time, progress payments aggregating $141,387.20.[1] Pursuant to the terms of the contract, the Government acquired a lien on the work in process to the extent of such payments (Dft's. Ex. A, Sched. p. 11). The Government did not enforce this lien by foreclosure, and instead exercised its option under the "Default" clause by requesting Rice to give it title by executing the said "Instrument of Transfer of Title under Contract NObs-3572."

Each of the petitioners had furnished supplies, materials and equipment to Rice for use in the construction of the said boats. Pursuant to the provisions of Section 13, Chapter 178, of the Revised Statutes of Maine, 1954, each petitioner had a good and valid lien on the said boats and hulls, and on the materials and supplies furnished by each petitioner on the date of the transfer of title and possession of said hulls, materials and supplies to the Government. The petitioners have not been paid by Rice nor the Government, and there are no assets in the bankrupt estate to pay their claims.

The contract contained the following clause (Dft's. Ex. A, Schedule, p. 12):

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[1] Rice had an equity in the subject contract amounting to at least $57,158.03 at the time it delivered the "Instrument of Transfer of Title under Contract NObs-3572."

> DISCHARGE OF LIENS: The Contractor shall immediately discharge or cause to be discharged any lien or right *in rem* of any kind, other than a (sic) favor of the Government, which at any time exists or arises with respect to the boats, and machinery, fittings, equipment or materials for the boats. If any such lien or right *in rem* is not immediately discharged, the Government may discharge or cause to be discharged said lien or right *in rem* at the expense of the Contractor.

The petitioners alleged a "taking" by the Government of their property rights, that is, their liens, when the Government obtained title to the partially completed vessels and manufacturing materials, and subsequently removed them from the State of Maine, and effectively destroyed their identity. In granting the respondent's motion for summary judgment, the court below erroneously held that the petitioners did not have liens on the property in question because the project was a "public work."

The court below, relying on the "Default" clause, held that "the contract provided the Government with inchoate title to the various materials supplied the contractor by petitioners," and for this reason, the petitioners could not acquire a lien against the property, and thus had no property right that was "taken."

Because the court below decided the case solely on the basis of denying that the petitioners had valid liens because of the Government's "inchoate title," the ultimate question of petitioners' entitlement to just compensation was not reached.

JURISDICTION OF THE COURT BELOW

The United States Court of Claims had jurisdiction under section 1491 of Title 28, United States Code.

REASONS FOR GRANTING THE PETITION

1. The Decision Below is in Conflict With Applicable Decisions of This Court

Under the subject contract, title to each boat was to pass to the Government after delivery to specified Government installations and their acceptance by the Government (Dft's. Ex. A, face page). The contract further provided for the Government to make progress payments to the contractor for costs incurred up to a maximum of 97% of the total contract price with:

> Any and all progress payments made hereunder . . . secured, when made, by a lien in favor of the Government upon the vessels, articles and things contracted for . . . (Deft's. Ex. A, Schedule. p. 11).

Further, the contract required the contractor to discharge "any lien or right *in rem*" other than in favor of the Government, on the boats and materials therefor, with the Government having the right to discharge "such lien or right *in rem*" at the contractor's expense if the contractor failed to do so (Dft's. Ex. A, Schedule. p. 12). Rice was not required to furnish and did not furnish a payment bond to guarantee payment of laborers and suppliers.

Upon termination of the subject contract for default, the Contracting Officer requested Rice to execute and deliver an "Instrument of Transfer of Title Under Contract NObs-3572" transferring to the Government all of Rice's right, title and interest in the partially completed boats and manufacturing materials. Rice complied with the request. In the face of this fact and of the clear and unambiguous contractual language that the parties to the contract intended that the title to the boats and manufacturing materials would remain in

Rice until delivery to and acceptance by the Government, the court below (Appendix I, p. 8a) held that

> . . . the contract provided the Government with inchoate title to the various materials supplied the contractor by the petitioners. In this sense the contract embraced a "public work" which was beyond the reach of subcontractors' liens. * * *

In *United States* v. *Ansonia Brass and Copper Company*, 218 U.S. 452, this Court considered the relative rights of the Government and suppliers with respect to liens acquired by the suppliers under state law upon vessels under construction for the Government. While that case involved somewhat different issues than does the instant case, this Court, in reaching its decision, set forth certain principles, applicable herein, that were completely ignored in the decision below.

In the *Ansonia* decision, the Court interpreted three contracts for the construction of vessels for the Government, the Benyuard, the Mohawk and the Galveston. As to each vessel, suppliers had asserted claims under lien rights that had been upheld by the Virginia courts, and this Court was called upon to interpret the contracts to determine whether suppliers' liens could be enforced against the vessels and, if so, whether the Government's liens were prior in right thereto. The contract for the Benyuard contained a partial payment clause that provided for the vesting of *title* in the Government as partial payments were made, and this Court held that suppliers' liens could not attach to that vessel since it was the property of the Government. As to the Mohawk and the Galveston, the contracts provided for the Government to acquire *liens* to the extent of the progress payments that it made. As to these two vessels, this Court held that there was no basis

which precluded the suppliers from enforcing their liens against the vessels.

There are marked similarities between the contract for the Galveston and the subject Rice contract. Each provided that upon default termination, the Government could acquire title to the vessel and materials (Clause 13th of the Galveston contract, p. 230 of the Record in the *Ansonia* case). After setting forth the clause in the Galveston contract requiring the contractor to satisfy any liens, this Court concluded (at p. 475) that the contract "was made in recognition of the rights of those who should furnish work or material for the vessel to secure their claims by liens."

It is implicit in this Court's decision in the *Ansonia* case that liens accorded to suppliers, materialmen and laborers by state law can attach to supplies being manufactured for the Government where the Government does not have title to such supplies.[2] The court below misinterpreted the *Ansonia* decision in reaching a contrary result herein.

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[2] This Court referred (at p. 475) to an opinion of the Attorney General, 23 Op. Atty Gen. 174, 176, as strengthening its conclusion. The pertinent portion of the Attorney General's opinion states:

> I assume it to be correct to say that if a State law authorized a lien for labor or materials furnished in the construction of a vessel under this form of contract, it would not be void or unenforcible because the vessel was in process of construction for the United States, the property to the same not yet having passed to the Government, and such liens could therefore be effectively enforced. The clause of the contract referred to making it optional with the Secretary of the Navy to require evidence that no liens or rights *in rem* of any kind exist against said vessel imports that such is the opinion of the Navy Department.

It is significant that following the rendering of the decision by this Court in the *Ansonia* case, Congress saw fit to enact a statute that made the Government's lien for partial payments "paramount to all other liens." Act of August 22, 1911, Ch. 42, 37 Stat. 32, 34 U.S.C. 582, as codified in 10 U.S.C. 7521, August 10, 1956. This legislation was a tacit recognition by Congress that suppliers' liens might attach to property under construction for the Government, and the remedy enacted by Congress was to provide for the paramountcy of the Government's lien—*not to prohibit suppliers' liens from attaching to the vessels.* The subject contract contained, in the partial payment clause, a provision for the paramountcy of the Government's liens pursuant to the said statute.[3]

The decision of the court below also reached a result contrary to the holding of this Court in *Title Guaranty & Trust Co.* v. *Crane Co.*, 219 U.S. 24, 33, in concluding that there was a "public work" involved herein. The *Title Guaranty* decision has been interpreted in *United States for the use of Mengel Body Co., Inc.* v. *Metropolitan Body Co., et al.*, 79 F. 2d 177 (CCA-2, 1935), and in *Maiatico Construction Co., Inc.* v. *United States to the use of Phelps, et al.*, 79 F. 2d 418 (CA-D.C., 1935), as establishing that a work is "public" if title is in the Government, but "private" if title is not in the Government. Similarly, The Attorney General of the United States, on the authority of the *Title Guar-*

[3] The cited statute does not improve the Government's position herein since when it acquired title, its lien merged with its title (*Moral* v. *Dearborn*, 12 Gray (78 Mass.) 336, 337). Further, the equity of at least $57,158.03 which Rice had in the materials was lost to the petitioners when the Government acquired title in lieu of enforcing its lien rights, estopping the Government from now claiming it merely enforced its lien.

anty and the *Mengel Body* cases, *supra*, has interpreted the phrase "public work"[4] as including only work on vessels *belonging to the United States*, or work on vessels under contracts that "provide for *passage of title to the United States* during the progress of the work as partial payments are made." (38 Op. Atty. Gen., 418, 421 (1936). (Emphasis supplied.)

The decision below is thus inconsistent with the holdings of this Court in the *Ansonia* and the *Title Guaranty & Trust Co.* cases.

2. The Decision Below Has Deprived the Petitioners of Their Right Under the Fifth Amendment to Obtain Just Compensation for the Taking of Their Property

The right of the petitioners to their liens was a substantive property right under well established principles. *Louisville Bank* v. *Radford*, 295 U.S. 555, reh. den. 296 U.S. 661; *Security Bank* v. *Ridge Land Etc. Co.*, 85 F. 2d 557, 561 (C.C.A.-9, 1936) reh. den. 86 F. 2d 3, cert. den. 299 U.S. 613, reh. den. 300 U.S. 686. The right to retain a lien until the debt secured thereby is paid may not be taken from a creditor consistently with the Fifth Amendment. *Security Bank* v. *Ridge*, *supra*.

In holding that the petitioners had no "property rights" which were "taken," the court below deprived the petitioners of their constitutional right to just compensation. It is clear from this Court's decision in *United States* v. *Ansonia Brass and Copper Co.*, *supra*,

[4] The referenced opinion of the Attorney General was rendered in connection with a request as to whether a vessel was a "public work" within the meaning of the Miller Act, requiring payment bonds to be furnished by contractors where a "public work" is involved. In the instant case no payment bond was required by the Government.

that the petitioners did have property rights, the right to enforce their liens against the liened property. This right, given them by the Maine statute, was effectively "taken" by the sovereign when it acquired title and possession to the boats, hulls and materials, removed the same from the State of Maine and effectively destroyed the identity of the property.

With regard to the Fifth Amendment, this Court has said:

> The constitutional interest is addressed to every sort of interest the citizen may possess." *United States v. General Motors Corp.*, 323 U.S. 373, 378.

The court below did not face up to the constitutional issue involved in this case. It decided that no liens were acquired by the petitioners because the vessels involved were a "public work" (Appendix I, p. 8a). The court below stated (Appendix I, p. 5a):

> * * * While the Supreme Court has not been called upon to determine the question of whether subcontractors may obtain recovery against the United States under the Fifth Amendment "taking" theory, the comprehensive language employed in *Munsey Trust Company* [*United States v. Munsey Trust Co.*, 332 U.S. 234] at 241, "nothing is more clear than that laborers and materialmen do not have enforceable rights against the United States for their compensation", would seem to preclude that basis for recovery.

If, as the petitioners contend, they have valid liens, contrary to the view of the court below, this Court's decision in *United States v. Munsey Trust Co., supra*, would not be controlling in deciding the issue herein.

Presumably the court below is correct in stating that this Court "has not been called upon to determine the

question of whether subcontractors may obtain recovery against the United States under the Fifth Amendment 'taking' theory." The determination of the issue as to the entitlement of the 27 petitioners herein to obtain just compensation for the taking of their property is the only remaining remedy available to them.

Since this constitutional issue has never been decided by this Court nor the court below, it is appropriate that this Court decide the question at this time. The constitutional question is an integral part of this case and, for this reason alone, review by this Court is important and necessary.

3. The Decision Below Deals With an Important Question of Federal Contract Law That Has Not Been, But Should Be, Settled by This Court, Namely, Whether the Language of the Standard Termination for Default Clause Automatically Gives the Government "Inchoate Title" to Completed Work, Work in Process and Material to be Used in the Performance of the Contract Prior to Delivery to and Acceptance by the Government of the Completed Items

The decision below has interjected into the law pertaining to federal contracts a new and novel concept that the Government has a title interest in all supplies and materials in the possession of its contractors by reason of the standard "Default" clause. This concept, if permitted to stand, has a drastic and far-reaching effect on the legal relationships between the Government and its contractors and the legal relationships between all Government contractors and their creditors, secured as well as unsecured, their suppliers, subcontractors, sureties and financial institutions as assignees of the proceeds of a contract. The decision below also will create problems for the states and their

local Governments in determining the ownership of personal property for tax purposes.[5]

In a recent Congressional hearing[6] it was stated by Congressman F. Edward Hebert that "in fiscal years 1957 and 1958, the Government entered into 7,837,000 contracts costing $41 billion." With Government contracting being of this magnitude, it is apparent that the effect of the decision of the court below, if permitted to stand, will be to cause a multitude of problems with attendant litigation, to determine the rights of all those who contract with the Government and their suppliers and creditors.

Under the interpretation of the court below, a financing institution that lends money to a company secured by its materials inventory would risk losing its security if the debtor entered into a contract with the Government that contained the standard "Default" clause, even though only a small portion of production was devoted to the Government contract. What would be the rights of a supplier who delivers material to a Government contractor on consignment if the Government acquires "inchoate title" to the material as soon as it comes into the possession of the contractor? In the case of a manufacturer of commercial items who contracts with the Government to supply these same

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[5] Cf. *Westinghouse Electric Corp.* v. *State Tax Commissioner of Maryland*, (1955), 111 A. 2d 661, wherein the Maryland Court of Appeals held that property in the possession of a Government contractor was not subject to personal property taxes if the Government had title thereto, but was taxable if the Government had merely a lien for progress payments made by it.

[6] Inquiry into the Administration and Operation of the Armed Services Board of Contract Appeals; Hearing before the Subcommittee for Special Investigations of the Committee on Armed Services, House of Representatives, 85th Congress, 2nd Session. Hearing held December 4, 1958, p. 791.

items to the Government, how would it be possible to determine which of these items or their components were Government property? Assume that a contractor had fifty batteries on hand that could be used to complete a Government contract for an electronic end item, but that the contractor uses them to complete a commercial order, ordering an additional stock of batteries for the Government contract; has he converted Government property? When does the Government's "inchoate title" attach to materials in the stock bin of a manufacturer of commercial items?—when the contract is awarded?—when the contractor forms an intention to apply them to the Government contract?—when he moves them out of the bins to the production line?—when he places them in units?—or when he delivers them to the Government in finished items? Does the Government's "inchoate title" to the materials prevent the imposition of personal property taxes on these materials in the possession of a Government contractor where such tax is levied against the owner? May an attaching creditor levy on the materials upon which the Government has "inchoate title"? The practical difficulties resulting from the interpretation of the court below of the standard "Default" clause found in Government supply contracts (ASPR 8-707) are manifold and enormous.

In holding that the Government had "inchoate title," the court below cited no precedents for its decision. The phrase "inchoate title" is not defined by the court, and its exact legal meaning, as applied to personal property, is so indefinite as to result in more confusion than clarity if the decision is allowed to stand.[7] Aside

[7] The phrase "inchoate title" has been used by this Court with reference to grants of public lands. It appears to refer to the title held by one granted land by the sovereign, by legislative act,

from the immediate issues of this case, the decision has such far-reaching consequences that this Court should exercise its power of review.

CONCLUSION

The decision below is in conflict with the applicable decisions of this Court in *United States* v. *Ansonia Brass & Copper Co., supra*, and *Title Guaranty & Trust Co.* v. *Crane Co., supra*. It is also in conflict with the applicable decision of the two Circuit Courts on the question of what constitutes a "public work." The decision below has deprived the petitioners of their constitutional right to just compensation. Because of the importance of the decision below on the legal relationships of the Government and its contractors and their suppliers and creditors, the decision below should be reviewed by this Court. It is respectfully requested that the Court grant the petition.

Respectfully submitted,

SOLOMON DIMOND
Attorney for Petitioners
1011 New Hampshire Ave., N. W.
Washington 7, D. C.

Dated, August 3, 1959.

Of Counsel:

BURTON R. THORMAN

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proclamation or agreement, but which title has not yet been perfected by issuance of a patent or other actual instrument of conveyance. ". . . inchoate title to lands is property." *Delassus* v. *United States*, 9 Pet. 117, 133; *Rogers Locomotive Machine Works* v. *American Emigrant Co.*, 164 U.S. 559; *Chapman & Dewey* v. *St. Francis Levee District*, 232 U.S. 186; *Little* v. *Williams*, 231 U.S. 335; *Work* v. *Louisiana*, 269 U.S. 250. Our research does not indicate any previous usage of the term as applied to personal property.